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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,964	07/30/2003	Scott J. Long		9546
31083	7590	01/10/2005		
THOMTE, MAZOUR & NIEBERGALL, L.L.C. 2120 S. 72ND STREET, SUITE 1111 OMAHA, NE 68124			EXAMINER	
			GARBER, CHARLES D	
			ART UNIT	PAPER NUMBER
			2856	

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/629,964	LONG, SCOTT J.	
	Examiner	Art Unit	
	Charles D. Garber	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 30 July 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 11-18 is/are allowed.
 6) Claim(s) 1-8 is/are rejected.
 7) Claim(s) 9 and 10 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 30 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>10/3/03, 10/6/03</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Elseth (US Patent 5,621,391).

Regarding claim 1, probe 154 includes an end 164 which is an elongated handle having a long axis that extends between first and second end portions shown in figure 4 at the right and left respectively. The section to the right of end 164 includes a sensor 190 (shown in figure 5 where all parts are oriented in the opposite direction) tip 158, shaft 156 and various other parts which may be considered to be a head member having forward and rearward end portions and upper and lower surfaces as shown. The rearward end portion is operatively coupled to the second end portion of the end 164 or handle.

The probe 154 (including handle and head parts discussed above) is sized such that they may be selectively disposed between an appliance and an operating surface. The head member is shaped such that at least a portion of the head member may be positioned first between an appliance and an operating surface and then below a fluid supply connection as intended in the instant invention.

As for claims 2-5, end 164, shaft 156, another portion attaching through joint 160 (not numbered but shown in figure 5 as the portion between the joint and shaft) and tip 158 may be considered to be equivalent to handle, extending arm, lengthening arm and testing arm respectively as in the instant invention. Each extends beyond the other and from a common long axis through the entire assembly 150.

As for claim 6, the tip 158 (testing arm) and the connecting portion between the tip 158 and shaft 156 (not numbered but shown in figure 4 which Examiner considers equivalent to a lengthening arm) are positioned with respect to one another so that lengthening arm can be selectively disposed along a first side of one of a plurality of supports to position a length of the testing arm behind one support as intended in the instant invention. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations *Ex parte Masham* 2 USPQ2d 1647 1987).

As for claim 7, the shaft 165 (extending arm) and the connecting portion between the tip 158 and shaft 156 (not numbered but shown in figure 4 which Examiner considers equivalent to a lengthening arm) are positioned with respect to one another so that the lengthening arm can be selectively disposed along a first side of one of a plurality of supports to position a length of the extending arm in front of one support as intended in the instant invention.

As for claim 8, the tip (testing arm) and portion between tip and shaft (lengthening arm) may be positioned such that tip is along one side and portion

between tip and shaft is behind any refrigerator support as intended in the instant invention. This may be the case when the one side and behind are the same side. Likewise, the shaft (extending arm) and portion between tip and shaft (lengthening arm) may be positioned such that the portion between tip and shaft is along a side and the shaft is along a forward side (when the one side and forward side are the same) as intended in the instant invention. The tip may also be below a fluid connection depending on the position of a fluid connection as intended in the instant invention.

Allowable Subject Matter

Claims 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 11-18 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 9, Elseth discussed above lacks the device further comprising a water soluble ink disposed on said head member. While Birkholz et al. (US Patent Application 2003/0096107) teaches a water contact indicator with water soluble ink. However, Birkholz teaches the indicator is permanently fixed to the article being monitored. The invention of Elseth is intended to be used over and over. Combining the indicator of Birkholz with the probe of Elseth would render both inventions unusable as originally intended.

As for claim 10, Examiner considers that including a water absorbing material in the head of Elseth would render the invention unusable as intended. The Elseth invention is intended to give an instant reading of moisture content wherever it is placed. A water absorbent material would interfere with this function.

As for claim 11, while Chapman et al. (US Patent 6,639,517) teaches positioning a leak detection mat under an appliance as shown in figure 7, the reference does not further teach; manipulating a handle to retrieve the mat away from the fluid connection; and checking it for the presence of fluid.

Claims 12-18 depending from allowed claim 11 is allowed for the same reason.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The additional references cited on the accompanying form PTO-892 though not cited above are provided to indicate other prior art moisture sensors, leak detectors which include one or more features or limitations in common with the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles D. Garber whose telephone number is (571) 272-2194. The examiner can normally be reached on 6:30 a.m. to 3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cdg



**CHARLES GARBER
PRIMARY EXAMINER**